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MICHAEL FAWKES, WILLIAM M. KLEIN,
WILLIAM N. MACGOWAN, WILLIAM F. RUSSELL,
DOW R. WILSON, and SABA SOFTWARE INC.,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JONATHAN STOLL, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

v.

MICHAEL R. ABBOTT, NORA DENZEL,
MICHAEL FAWKES, WILLIAM M. KLEIN,
WILLIAM N. MACGOWAN, WILLIAM F.
RUSSELL, DOW R. WILSON, and SABA
SOFTWARE INC.,

Defendants.

Case No.

CLASS ACTION

**NOTICE OF REMOVAL OF STATE
COURT CIVIL ACTION**

1 **TO THE CLERK OF THIS COURT, PLAINTIFF, AND HIS COUNSEL:**

2 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1331, 1441, and 1446,
 3 defendants Michael R. Abbott, Nora Denzel, Michael Fawkes, William M. Klein, William N.
 4 MacGowan, William F. Russell, and Dow R. Wilson (“Removing Defendants”) hereby remove
 5 this case, and all cases and causes of action therein, from the Superior Court of the State of
 6 California for the County of San Mateo to the United States District Court for the Northern
 7 District of California. In support of this Notice of Removal, Removing Defendants set forth the
 8 following grounds for removal:

9 **I. BACKGROUND**

10 1. On or about July 12, 2013, Plaintiff Jonathan Stoll commenced a civil action in the
 11 Superior Court of the State of California for the County of San Mateo, captioned *Stoll v. Abbott,*
 12 *et al*, Case No. CIV-522809 (the “State Court Action”). True and accurate copies of the
 13 Summons and Complaint from the State Court Action are attached as Exhibit A and Exhibit B,
 14 respectively. The State Court Action is a putative nationwide class action brought against Saba
 15 and certain officers and directors of Saba. Plaintiff asserts claims for alleged violations of the
 16 federal securities laws.

17 2. Removing Defendants have not pled, answered, or otherwise appeared in the State
 18 Court Action.

19 3. Service of Summons and Complaint were completed on each of the Removing
 20 Defendants on August 22, 2013, pursuant to Cal. Code Civ. Proc. § 415.30.

21 4. This Notice of Removal is being filed before the expiration of “30 days after
 22 receipt by or service on [Removing Defendants] of the initial pleading or summons” and is thus
 23 timely under 28 U.S.C. § 1446(b)(2)(B).

24 **II. PROCEDURAL REQUIREMENTS**

25 5. Removing Defendants will promptly serve a copy of this Notice on counsel for
 26 Plaintiff and will file a copy of this Notice with the Clerk of the Superior Court for the State of
 27 California for the County of San Mateo, pursuant to 28 U.S.C. § 1446(d).

6. Undersigned counsel certify that all of the defendants in this action consent to removal.

7. Removing Defendants further certify that as of this date—other than the named parties—they are unaware of any person or entity with an interest to report. Civil L.R. 3-16(c)(2).

III. INTRADISTRICT ASSIGNMENT

8. Pursuant to Northern District Civil Local Rule 3-2(c), securities actions like this one “shall be assigned on a district-wide basis.”

IV. JURISDICTION

9. The Court has federal question jurisdiction over this case. *See* 28 U.S.C. § 1331. The claims in this case arise under federal law. *See id.* § 1441(c).

V. BASIS FOR REMOVAL

9. The first cause of action in Plaintiff’s Complaint seeks an injunction requiring Saba to publish financial statements for all quarterly and annual periods since the period ended November 30, 2011, and to publish accurate financials going forward. (Complaint ¶ 35.) A publicly-traded company’s obligation to publish financial statements arises under the Securities Exchange Act of 1934 (“Exchange Act”), including Section 13 (15 U.S.C. § 78m), rules of the Securities and Exchange Commission (“SEC”) promulgated thereunder, and the rules of the NASDAQ. Plaintiff’s Complaint repeatedly acknowledges the source of this obligation throughout the Complaint. (*See, e.g.*, Compl. ¶¶ 16, 18, 19.) NASDAQ rules are “issued pursuant to the Exchange Act’s directive that self-regulatory organizations adopt rules and by-laws in conformance with the Exchange Act.” *Sparta Surgical Corp. v. Nat’l Assoc. of Sec. Dealers, Inc.*, 159 F.3d 1209, 1212 (9th Cir. 1998) (citing 15 U.S.C. § 78o-3(b)).

10. Under section 27 of the Exchange Act, federal courts have exclusive jurisdiction over actions “brought to enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder.” 15 U.S.C. § 78aa(a).

11. As this is a civil action for which the Court has original jurisdiction under 28 U.S.C. § 1331, it is removable under 28 U.S.C. § 1441, which provides:

1 Except as otherwise expressly provided by Act of Congress, any
 2 civil action brought in a State court of which the district courts of
 3 the United States have original jurisdiction, may be removed by the
 4 defendant or defendants, to the district court of the United States for
 the district and division embracing the place where such action is
 pending.

5 28 U.S.C. § 1441(a).

6 12. A case may also “arise under” federal law pursuant to 28 U.S.C. § 1331 “where
 7 the vindication of a right under state law necessarily turn[s] on some construction of federal law”
 8 (internal citation and quotation omitted). *Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804,
 9 808 (1986).

10 13. Plaintiff’s first cause of action will require evaluation of federal regulations and
 11 other laws arising under the Exchange Act—a federal statute. Because Plaintiff’s causes of action
 12 “necessarily turn on some construction of federal law,” federal question jurisdiction exists. *Id.* at
 13 808. And whether or not explicitly pleaded, “federal-question jurisdiction will lie over state-law
 14 claims that implicate significant federal issues.” *Grable & Sons Metal Prods., Inc. v. Darue*
 15 *Eng’g & Mfg.*, 545 U.S. 308, 312 (2005). For this additional reason, this action is removable
 16 under 28 U.S.C. § 1441(a).

17 **VI. CONCLUSION**

18 14. For the foregoing reasons pursuant to 28 U.S.C. § 1441, Removing Defendants
 19 remove this action in its entirety from the Superior Court for the State of California for the
 20 County of San Mateo, to this Court.

21
 22 Dated: September 8, 2013

MORRISON & FOERSTER LLP

23
 24 By: /s/ Mark R.S. Foster
 Mark R.S. Foster

25 Attorneys for Defendants
 26 MICHAEL R. ABBOTT, NORA DENZEL,
 27 MICHAEL FAWKES, WILLIAM M. KLEIN,
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 and SABA SOFTWARE INC.